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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In re Applications of	)	MM DOCKET NO. 97-128
MARTIN W. HOFFMAN, Trustee-in-Bankruptcy for Astroline Communications Company Limited Partnership	)	File No. BRCT-881201LG
For Renewal of License of Station WHCT-TV, Hartford, Connecticut	)	
SHURBERG BROADCASTING OF HARTFORD	)	File No. BPCT-831202KF
For Construction Permit for a New Television Station to Operate on Channel 18, Hartford, Connecticut	)	

RECEIVED

JUN 23 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

TO: Magalie Roman Salas, Secretary
for direction to
The Commission

COMMENTS OF SHURBERG BROADCASTING OF HARTFORD IN PARTIAL SUPPORT OF MASS MEDIA BUREAU'S EXCEPTIONS

1. Alan Shurberg d/b/a Shurberg Broadcasting of Hartford ("SBH") hereby submits his Comments in partial support of the Exceptions filed in the above-captioned proceeding by the Mass Media Bureau ("Bureau").

2. In its Exceptions the Bureau notes that the captioned renewal application can***not*** be granted because of SBH's pending application. The Bureau is, of course, correct on that point. As SBH has argued at length in its own Exceptions herein, the captioned renewal application should not and cannot be granted in any event because of the disqualifying conduct of Astroline Communications Company Limited Partnership

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("ACCLP"), as amply disclosed in the record evidence of this case. [1/]

3. But even if that record evidence were to be ignored, the Bureau is correct that the renewal application could not in any event be granted prior to a comparative hearing between ACCLP (or its current representative, Martin Hoffman, Trustee in Bankruptcy) and SBH.

4. Of course, a comparative hearing would not be required if ACCLP were found to be disqualified -- and, as SBH has demonstrated in its Exceptions, the record evidence plainly supports that conclusion. If ACCLP were found to be disqualified and the Hoffman/ACCLP renewal application were to be denied, SBH would be the last remaining applicant, and its application could be granted, as the Commission has indicated in the Hearing Designation Order herein.

5. This does not mean, however, that Hoffman, as the Trustee in Bankruptcy, would necessarily have to go away empty-handed. SBH hereby advises the Commission that if the Commission were, in its initial response to SBH's Exceptions, to deny the ACCLP/Hoffman renewal application and grant the SBH application, SBH would be willing to accept such a grant of its application subject to the condition that SBH would pay to the ACCLP estate the same consideration which the estate would otherwise realize if it were to retain the license and sell it as currently proposed. [2/]

6. SBH does not contemplate that such a condition would constitute an assignment of the license, because (a) ACCLP would have been determined to be

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[1/] To the extent that the Bureau argues that the record does not support disqualification of ACCLP, SBH disagrees with the Bureau for the reasons set forth in SBH's Exceptions.

[2/] SBH understands that the consideration which has been expressly approved by the Bankruptcy Court for the sale of the license is approximately One Million Dollars.

unqualified, and therefore it (and, thus, Hoffman) would have no license to sell and (b) SBH would be receiving from the Commission ***not*** a license, but a grant of SBH's construction permit application. Still, a Commission-mandated payment to Hoffman would permit the ACCLP estate to realize the value which it itself has previously placed on the license, thus eliminating any concern (valid or otherwise) the Commission might have about taking an action (*i.e.*, denial of the ACCLP renewal) which might adversely affect the interests of supposedly innocent creditors of the ACCLP estate.

7. Such an approach would also have the extremely salutary effect of putting to a reasonably abrupt end the Hartford/Channel 18 proceeding, which is well into its sixteenth year before the Commission (and the Court of Appeals, and the Supreme Court). If this approach is not taken, the Commission will be consigning itself to years more litigation, including unwieldy comparative renewal litigation; the Commission will also be committing itself to further defense of a patently unconstitutional "minority" ownership policy [3/] which

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[3/] The "minority distress sale policy" was found to be unconstitutional by the U.S. Court of Appeals for the District of Columbia Circuit in *Shurberg Broadcasting of Hartford, Inc. v. FCC*, 876 F.2d 902 (D.C. Cir. 1989), which applied a "strict scrutiny" analysis to reach that conclusion. While the Court of Appeals decision was reversed by the Supreme Court in *Metro Broadcasting, Inc. v. FCC*, 497 U.S. 547 (1990), in doing so the Supreme Court relied upon a less rigorous standard of judicial review. That less rigorous standard was later explicitly rejected by the Supreme Court, which also explicitly overruled *Metro* on precisely that point and concluded that "strict scrutiny" was the appropriate standard to be applied. *Adarand Constructors, Inc. v. Pena*, 515 U.S. 200 (1995). Since the distress sale policy has already failed (before the Court of Appeals) to satisfy that "strict scrutiny" standard, it is safe to conclude that that policy is, indeed, unconstitutional.

was invoked by a blatantly sham/front entity, as the record developed below clearly establishes. [4/]

Respectfully submitted,

/s/ Harry F. Cole
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June 23, 1999

[4/] In a recent speech, Chairman Kennard encouraged the revivification of the minority tax certificate policy, but subject to the explicit caveat that that proposed policy not be available to "large corporations or unscrupulous deal-makers operating as fronts". Remarks of William E. Kennard, Chairman (Citizenship Education Fund, June 17, 1999). The record evidence establishes, *inter alia*, that: ACCLP, the supposedly minority-owned/controlled limited partnership, was really owned and controlled by non-minority individuals who invested more than $22 million, as opposed to the meager sum of $210 which constituted the ***total*** investment of the minority individual who supposedly "controlled" the partnership; while ACCLP repeatedly told the Commission (and the courts) that that minority individual owned 21% of ACCLP, it repeatedly told the Internal Revenue Service that he really owned significantly less than 1%; that minority individual did not even possess the partnership's checkbook, which was maintained in the headquarters of the non-minority supposedly "limited" partners; etc., etc. In other words, ACCLP was plainly a "front" operation assembled by non-minorities seeking to avail themselves of the benefits of a policy which was not available to them as non-minorities. If the Commission is honestly concerned about "fronts", as the Chairman's remarks suggest, the Commission must conclude that ACCLP was precisely the kind of "front" which must be rejected. Any contrary conclusion would demonstrate that the Commission, despite the Chairman's nice rhetoric, is intent upon ignoring *Adarand* and the Constitutional standards plainly articulated and imposed therein. Such disregard of clearly-stated Constitutional standards will not survive judicial scrutiny.

CERTIFICATE OF SERVICE

I hereby certify that, on this 23rd day of June, 1999, I caused copies of the foregoing "Comments of Shurberg Broadcasting of Hartford in Partial Support of Mass Media Bureau's Exceptions" to be placed in the U.S. Postal Service, first class postage prepaid, or hand delivered (as indicated below), addressed to the following:

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